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8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/16-16497

13 **TOBYS AUTO REPAIR**  
14 **TOBY TY WHITE, OWNER**  
15 **2112 W. Main St.**  
**Turlock, CA 95380**

**A C C U S A T I O N**

16 **Automotive Repair Dealer Registration**  
17 **No. ARD 186937**  
**Smog Check Station No. RC 186937**

18 **and**

19 **TOBY TY WHITE**  
20 **Smog Check Inspector No. EO 155095**  
**(Formerly Advanced Specialist**  
21 **Technician No. EA 155095)**  
22 **Smog Check Repair Technician License**  
**No. EI 155095**

23 Respondents.

24  
25 Complainant alleges:

26 **PARTIES**

27 1. Patrick Dorais ("Complainant") brings this Accusation solely in his official capacity  
28 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.



1 proceeding against an automotive repair dealer or to render a decision temporarily or permanently  
2 invalidating (suspending or revoking) a registration.

3 7. Health and Safety Code ("Health & Saf. Code") section 44002 provides, in pertinent  
4 part, that the Director has all the powers and authority granted under the Automotive Repair Act  
5 for enforcing the Motor Vehicle Inspection Program.

6 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or  
7 suspension of a license by operation of law, or by order or decision of the Director of Consumer  
8 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director  
9 of jurisdiction to proceed with disciplinary action.

10 9. Health & Saf. Code section 44072.8 states that when a license has been revoked or  
11 suspended following a hearing under this article, any additional license issued under this chapter  
12 in the name of the licensee may be likewise revoked or suspended by the director.

13 **STATUTORY AND REGULATORY PROVISIONS**

14 10. Bus. & Prof. Code section 9884.7 states, in pertinent part:

15 (a) The director, where the automotive repair dealer cannot show there  
16 was a bona fide error, may deny, suspend, revoke or place on probation the  
17 registration of an automotive repair dealer for any of the following acts or omissions  
18 related to the conduct of the business of the automotive repair dealer, which are done  
19 by the automotive repair dealer or any automotive technician, employee, partner,  
20 officer, or member of the automotive repair dealer.

21 (1) Making or authorizing in any manner or by any means whatever any  
22 statement written or oral which is untrue or misleading, and which is known, or which by  
23 the exercise of reasonable care should be known, to be untrue or misleading.

24 ...

25 (4) Any other conduct which constitutes fraud.

26 ...

27 (6) Failure in any material respect to comply with the provisions of this chapter  
28 or regulations adopted pursuant to it.

...

1 (c) Notwithstanding subdivision (b), the director may suspend, revoke or  
2 place on probation the registration for all places of business operated in this state by  
3 an automotive repair dealer upon a finding that the automotive repair dealer has, or is,  
4 engaged in a course of repeated and willful violations of this chapter, or regulations  
5 adopted pursuant to it.

6 11. Bus. & Prof. Code section 22, subdivision (a), states:

7 "Board" as used in any provision of this Code, refers to the board in which the  
8 administration of the provision is vested, and unless otherwise expressly provided, shall  
9 include "bureau," "commission," "committee," "department," "division," "examining  
10 committee," "program," and "agency."

11 12. Bus. & Prof. Code section 477, subdivision (b), states, in pertinent part, that a  
12 "license" includes "registration" and "certificate."

13 13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

14 The director may suspend, revoke, or take other disciplinary action against a license  
15 as provided in this article if the licensee, or any partner, officer, or director thereof, does  
16 any of the following:

17 (a) Violates any section of this chapter [the Motor Vehicle Inspection Program  
18 (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which  
19 relate to the licensed activities.

20 ...

21 (c) Violates any of the regulations adopted by the director pursuant to this chapter.

22 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is  
23 injured. . .

24 14. Health & Saf. Code section 44072.10 states, in pertinent part:

25 ...

26 (c) The department shall revoke the license of any smog check technician or station  
27 licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of  
28 vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

(1) Clean piping, as defined by the department. . .

...

(4) Intentional or willful violation of this chapter or any regulation, standard, or  
procedure of the department implementing this chapter.

1 15. Health & Saf. Code section 44024.5, subdivision (a), states:

2 The department shall compile and maintain statistical and emissions  
3 profiles and data from motor vehicles that are subject to the motor vehicle inspection  
4 program. The department may use data from any source, including remote sensing  
5 data, in use data, and other motor vehicle inspection program data, to develop and  
6 confirm the validity of the profiles, to evaluate the program, and to assess the  
7 performance of smog check stations. The department shall undertake these  
8 requirements directly or seek a qualified vendor for these services.

9 16. Health & Saf. Code section 44037 states, in pertinent part:

10 (a) The department shall compile and maintain records, using the  
11 sampling methodology necessary to ensure their scientific validity and reliability, of  
12 tests and repairs performed by qualified smog check technicians at licensed smog  
13 check stations pursuant to this chapter on all of the following information:

14 (1) The motor vehicle identification information and the test data  
15 collected at the station.

16 . . . .

17 (5) Data received and compiled through the use of the centralized  
18 computer database and computer network to be established pursuant to Section  
19 44037.1, and any other information determined to be essential by the department for  
20 program enhancement to achieve greater efficiency, consumer protection, cost-  
21 effectiveness, convenience, or emission reductions . . .

22 17. Health & Saf. Code section 44037.1 states, in pertinent part:

23 (a) On or before January 1, 1995, the department shall design and  
24 establish the equipment necessary to operate a centralized computer data base and  
25 computer network that is readily accessible by all licensed smog check technicians on  
26 a real time basis.

27 (b) The centralized computer data base and network shall be designed  
28 with all of the following capabilities:

. . . .

(2) To provide smog check technicians and the department with  
information as to the date and result of prior smog check tests performed on each  
vehicle to discourage vehicle owners from shopping for certificates of compliance  
and to permit the department to identify smog check stations for further investigation  
as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair  
effectiveness for vehicles of each make and model year on a statewide basis, and by  
smog check station and technician, to facilitate identification of smog check stations  
and technicians as potential violators of this chapter.

. . . .

(8) To be compatible with the department's recordkeeping and  
compilation requirements established by Section 44037.

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(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair . . .

18. California Code of Regulations, title 16, section 3340, states, in pertinent part, that '[c]lean piping' for the purposes of Health and Safety Code section 44072.10(c)(l), means the use of a substitute exhaust emissions sample in place of the actual test vehicle's exhaust in order to cause the EIS to issue a certificate of compliance for the test vehicle.

19. Title 16, California Code of Regulations, section 3340.17 states, in pertinent part:

....

(c) Vehicle data and test results from the OBD Inspection System (OIS) shall be transmitted to the bureau's centralized database . . .

20. California Code of Regulations, title 16, section 3340.24, states in pertinent part:

...

(c) The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.

...

21. California Code of Regulations, title 16, section 3340.30, states:

"A smog check technician shall comply with the following requirements at all times while licensed.

"(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

....

22. California Code of Regulations, title 16, section 3340.41, subdivision (c), states, in pertinent part, that no person shall knowingly enter into the emissions inspection system any false information about the vehicle being tested.

23. California Code of Regulations, title 16, section 3340.42, states:

"Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

"(a) All vehicles subject to a smog check inspection, shall receive one of the following test methods:

1 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999  
2 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the  
3 state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide  
4 and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in  
5 subsection (a) of Section 3340.17 of this article. The loaded-mode test shall use  
6 Acceleration Simulation Mode (ASM) test equipment, including a chassis dynamometer,  
7 certified by the bureau.

8 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this  
9 inspection shall be measured and compared to the emissions standards shown in the Vehicle  
10 Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March  
11 2010, which is hereby incorporated by reference. If the emissions standards for a specific  
12 vehicle are not included in this table then the exhaust emissions shall be compared to the  
13 emissions standards set forth in TABLE I or TABLE II, as applicable. A vehicle passes the  
14 loaded-mode test if all of its measured emissions are less than or equal to the applicable  
15 emission standards specified in the applicable table.

16 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 -  
17 1999 model-year vehicles, except diesel-powered, registered in all program areas of the  
18 state, except in those areas of the state where the enhanced program has been implemented.  
19 The two-speed idle mode test shall measure hydrocarbon, carbon monoxide and carbon  
20 dioxide emissions at high RPM and again at idle RPM, as contained in the bureau's  
21 specifications referenced in subsection (a) of Section 3340.17 of this article. Exhaust  
22 emissions from a vehicle subject to this inspection shall be measured and compared to the  
23 emission standards set forth in this section and as shown in TABLE III. A vehicle passes  
24 the two-speed idle mode test if all of its measured emissions are less than or equal to the  
25 applicable emissions standards specified in Table III.

26 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-  
27 powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-  
28 year and newer. The OBD test failure criteria are specified in section 3340.42.2.

“(b) In addition to subsection (a), all vehicles subject to the smog check  
program shall receive the following:

“(1) A visual inspection of emission control components and systems to verify  
the vehicle's emission control systems are properly installed.

“(2) A functional inspection of emission control systems as specified in the  
Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to  
verify their proper operation.

“(c) The bureau may require any combination of the inspection methods in  
sections (a) and (b) under any of the following circumstances:

“(1) Vehicles that the department randomly selects pursuant to Health and  
Safety Code section 44014.7 as a means of identifying potential operational problems with  
vehicle OBD systems.

“(2) Vehicles identified by the bureau as being operationally or physically  
incompatible with inspection equipment.

“(3) Vehicles with OBD systems that have demonstrated operational problems.

“(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter  
standards are as follows:

1 “(1) A gross polluter means a vehicle with excess hydrocarbon, carbon  
2 monoxide, or oxides of nitrogen emissions pursuant to the gross polluter emissions  
standards included in the tables described in subsection (a), as applicable.

3 “(2) Vehicles with emission levels exceeding the emission standards for gross  
4 polluters during an initial inspection will be considered gross polluters and the provisions  
5 pertaining to gross polluting vehicles will apply, including, but not limited to, sections  
44014.5, 44015, and 44081 of the Health and Safety Code.

6 “(3) A gross polluting vehicle shall not be passed or issued a certificate of  
7 compliance until the vehicle's emissions are reduced to or below the applicable emissions  
8 standards for the vehicle included in the tables described in subsection (a), as applicable.  
However, the provisions described in section 44017 of the Health and Safety Code may  
apply.

9 “(4) This subsection applies in all program areas statewide to vehicles requiring  
inspection pursuant to sections 44005 and 44011 of the Health and Safety Code.”

10 24. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog  
11 check stations shall be performed in accordance with procedures prescribed by the department.

#### 12 COST RECOVERY

13 25. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation or violations of  
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
16 enforcement of the case.

#### 17 REVIEW OF OIS TEST DATA FOR TOBYS AUTO REPAIR

##### 18 Background

19 26. On March 9, 2015, California's Smog Check Program was updated to keep pace with  
20 ever-advancing technology. The program update requires the use of an On-Board Diagnostic  
21 Inspection System (BAR-OIS). BAR-OIS is the smog check equipment required in all areas of  
22 the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles and  
23 most 1998 and newer diesel vehicles. The system consists of a certified Data Acquisition Device  
24 (DAD), computer, bar code scanner, and printer.

25 27. The DAD is an On Board Diagnostic (OBD) scan tool that, when requested by the  
26 California BAR-OIS software, retrieves OBD data from the vehicle. The DAD connects between  
27 the BAR-OIS computer and the vehicle's diagnostic link connector. The bar code scanner is used  
28 to input technician information, the vehicle identification number, and DMV renewal



1 information. The vehicle identification number (VIN) that is physically present on all vehicles is  
2 required to be programmed into the vehicle's On-Board Diagnostics – Generation II (OBD II) on  
3 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in  
4 earlier model-years. The electronically programmed VIN is referred to as the “eVIN”, is captured  
5 by the Bureau during a smog check inspection, and should match the physical VIN on the vehicle.  
6 The printer is used to provide a Vehicle Inspection Report (VIR), which shows the inspection  
7 results and the Smog Check Certificate of Compliance Number for passing vehicles. Data  
8 retrieved and recorded during an OIS smog check includes the eVIN, the communication  
9 protocol<sup>2</sup>, and the number of Parameter Identifications (PID's)<sup>3</sup>.

10 **Factual Allegations**

11 28. Bureau representative J.L. reviewed OIS test data pertaining to smog inspections  
12 conducted at Tobys Auto Repair. J.L. found that the facility's smog check technician Toby Ty  
13 White, allegedly performed smog inspections on the four (4) vehicles identified below using a  
14 method known as "clean plugging",<sup>4</sup> resulting in the issuance of fraudulent certificates of  
15 compliance for the vehicles.

16 **Vehicle 1**

17 29. The OIS test data showed that on February 1, 2016, Respondent Toby Ty White  
18 allegedly performed a smog inspection on a 2007 Dodge Charge SE/SXT (“Vehicle 1”), resulting  
19 in the issuance of electronic Smog Certificate of Compliance No. YV588570C. The OIS test  
20

21 \_\_\_\_\_  
22 <sup>2</sup> The OBD II communication protocol describes the specified communication “language”  
23 used by the OBD II computer to communicate to scan tools and other devices such as the BAR-  
24 OIS. The communication protocol is programmed into the OBD II computer during manufacture  
25 and does not change.

26 <sup>3</sup> PID's are data points reported by the OBD II computer to the scan tool or BAR-OIS (for  
27 example, engine speed (rpm), vehicle speed, engine temperature, etc.) The PID count is the  
28 number of data points reported by the OBD II computer and is programmed during manufacture.

<sup>4</sup> Clean-plugging is the use of a vehicle's properly functioning OBD II system, or another  
source, to generate passing diagnostic readings for the purpose of issuing a fraudulent smog  
certificate of compliance to another vehicle that is not in compliance with the Smog Check  
Program and/or is not present for testing.

1 details for Vehicle 1 revealed that the e-VIN recorded during the inspection did not match the  
2 physical VIN on the vehicle.

3 30. The Bureau's VID (Vehicle Information Database) data showed that on February 1,  
4 2016, Respondent Toby Ty White performed a smog inspection on a 2004 Ford Explorer and that  
5 the e-VIN transmitted to the VID was the same e-VIN that was recorded during the smog  
6 inspection on Vehicle 1. J. L. found that the communication protocol and PID count recorded  
7 during the inspection on the 2004 Ford Explorer were consistent with the communication protocol  
8 and PID count recorded during the inspection on Vehicle 1. J. L. concluded that Respondent  
9 Toby Ty White used the 2004 Ford Explorer's properly functioning OBD II system during the  
10 smog inspection on Vehicle 1, resulting in the issuance of a fraudulent smog certificate of  
11 compliance for the vehicle.

12 **Vehicle 2**

13 31. The OIS test data showed that on June 1, 2016, Respondent Toby Ty White allegedly  
14 performed a smog inspection on a 2002 GMC Sierra C2500 HD ("Vehicle 2"), resulting in the  
15 issuance of electronic Smog Certificate of Compliance No. ZD705313C. The OIS test details for  
16 Vehicle 2 revealed that the communication protocol reported was incorrect and that the e-VIN  
17 recorded during the inspection did not match the physical VIN on the vehicle.

18 32. The Bureau's VID (Vehicle Information Database) data showed that on April 21,  
19 2015, Respondent Toby Ty White performed a smog inspection on a 2007 GMC Sierra K2500  
20 HD and that the e-VIN transmitted to the VID was the same e-VIN that was recorded during the  
21 smog inspection on Vehicle 2. J. L. found that the communication protocol and PID count  
22 recorded during the inspection on the 2007 GMC Sierra K2500 HD were consistent with the  
23 communication protocol and PID count recorded during the inspection on Vehicle 2. J. L.  
24 concluded that Respondent Toby Ty White used the 2007 GMC Sierra K2500 HD's properly  
25 functioning OBD II system during the smog inspection on Vehicle 2, resulting in the issuance of a  
26 fraudulent smog certificate of compliance for the vehicle.

27  
28 //

1           **Vehicle 3**

2           33.    The OIS test data showed that on June 17, 2016, Respondent Toby Ty White  
3 allegedly performed a smog inspection on a 2004 Ford F250 Super Duty (“Vehicle 3”), resulting  
4 in the issuance of electronic Smog Certificate of Compliance No. ZD705322C. The OIS test  
5 details for Vehicle 3 revealed that the e-VIN recorded during the inspection did not match the  
6 physical VIN on the vehicle.

7           34.    The Bureau’s VID (Vehicle Information Database) data showed that on January 26,  
8 2015, Respondent Toby Ty White performed a smog inspection on a 2005 Ford F250 Super Duty  
9 and that the e-VIN transmitted to the VID was the same e-VIN that was recorded during the smog  
10 inspection on Vehicle 3. J. L. found that the communication protocol and PID count recorded  
11 during the inspection on the 2005 Ford F250 Super Duty were consistent with the communication  
12 protocol and PID count recorded during the inspection on Vehicle 3. J. L. concluded that  
13 Respondent Toby Ty White used the 2005 Ford F250 Super Duty’s properly functioning OBD II  
14 system during the smog inspection on Vehicle 3, resulting in the issuance of a fraudulent smog  
15 certificate of compliance for the vehicle.

16           **Vehicle 4**

17           35.    The OIS test data showed that on July 14, 2016, Respondent Toby Ty White allegedly  
18 performed a smog inspection on a 2005 Chevrolet Malibu Maxx LS (“Vehicle 4”), resulting in  
19 the issuance of electronic Smog Certificate of Compliance No. ZD705347C. The OIS test details  
20 for Vehicle 4 revealed that the e-VIN recorded during the inspection did not match the physical  
21 VIN on the vehicle.

22           36.    The Bureau’s VID (Vehicle Information Database) data showed that on January 13,  
23 2016, Respondent Toby Ty White performed a smog inspection on a 2008 Ford Escape XLT and  
24 that the e-VIN transmitted to the VID was the same e-VIN that was recorded during the smog  
25 inspection on Vehicle 4. J. L. found that the communication protocol and PID count recorded  
26 during the inspection on the 2008 Ford Escape XLT were consistent with the communication  
27 protocol and PID count recorded during the inspection on Vehicle 4. J. L. concluded that  
28 Respondent Toby Ty White used the 2008 Ford Escape XLT’s properly functioning OBD II

1 system during the smog inspection on Vehicle 4, resulting in the issuance of a fraudulent smog  
2 certificate of compliance for the vehicle.

3 37. On or about October 5, 2016, Bureau representatives E.L. and J.L. made a field trip to  
4 visit the facility and obtained copies of various documents, including vehicle inspection reports  
5 (VIR) for the four vehicles illegally certified by Tobys Auto Repair.

6 38. The discrepancies in the OIS test data noted above prove the OIS Data Acquisition  
7 Device (DAD) was not connected to the vehicles allegedly being tested, resulting in the issuance  
8 of fraudulent Smog Certificates of Compliance by Respondents Tobys Auto Repair and  
9 technician Toby Ty White.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 39. Respondent Toby Ty White's registration is subject to disciplinary action pursuant to  
13 Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent made unauthorized  
14 statements which he knew or in the exercise of reasonable care should have known to be untrue or  
15 misleading, as follows: Respondent, Toby Ty White, certified under penalty of perjury on the  
16 VIR's that Vehicles 1 through 4, identified in paragraphs 29 through 36 above, had passed  
17 inspection and were in compliance with applicable laws and regulations. In fact, Respondent used  
18 clean plugging methods in order to issue certificates for the vehicles and did not test or inspect the  
19 vehicles as required by Health & Saf. Code section 44012.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 40. Respondent Toby Ty White's registration is subject to disciplinary action pursuant to  
23 Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that Respondent committed acts that  
24 constitute fraud by issuing electronic smog certificate of compliance for Vehicles 1 through 4,  
25 identified in paragraphs 29 through 36 above, without ensuring that bona fide inspections were  
26 performed of the emission control devices and systems on the vehicles, thereby depriving the  
27 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
28 Program.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Provisions of the Bus. & Prof. Code)**

3 41. Respondent Toby Ty White's registration is subject to disciplinary action pursuant to  
4 Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent failed to comply with  
5 section 9884.7, subdivision (a)(1), of that Code in a material respect, as follows: Respondent  
6 made unauthorized statements which he knew or in the exercise of reasonable care should have  
7 known to be untrue or misleading, as follows: Respondent certified under penalty of perjury on  
8 the VIR's that Vehicles 1 through 4, identified in paragraphs 29 through 36 above, had passed  
9 inspection and were in compliance with applicable laws and regulations. In fact, Respondent used  
10 clean plugging methods in order to issue certificates for the vehicles and did not test or inspect the  
11 vehicles as required by Health & Saf. Code section 44012.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Violations of Motor Vehicle Inspection Program)**

14 42. Respondent's Smog Check station license is subject to disciplinary action pursuant to  
15 Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply with  
16 provisions of that Code, as follows:

17 a. **Section 44012:** Respondent failed to ensure that the emission control tests were  
18 performed on Vehicles 1 through 4, identified in paragraphs 29 through 36 above, in accordance  
19 with procedures prescribed by the department

20 b. **Section 44015:** Respondent issued electronic smog certificates of compliance for  
21 Vehicles 1 through 4, identified in paragraphs 29 through 36 above, without ensuring that the  
22 vehicles were properly tested and inspected to determine if they were in compliance with Health  
23 & Saf. Code section 44012.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

26 43. Respondent Toby Ty White's smog check station license is subject to disciplinary  
27 action under Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed with  
28 comply with provisions of California Code of Regulations, title 16, as follows:

1 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic  
2 certificates of compliance without performing bona fide inspections of the emission control  
3 devices and systems on those vehicles as required by Health & Saf. Code section 44012.

4 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of  
5 compliance for Vehicles 1 through 4, identified in paragraphs 29 through 36 above, even though  
6 those vehicles had not been inspected in accordance with section 3340.42 of the Health & Saf.  
7 Code.

8 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections  
9 on Vehicles 1 through 4, identified in paragraphs 29 through 36 above, in accordance with the  
10 Bureau's specifications.

11 d. **Section 3340.45:** Respondent failed to perform Smog Check inspections in  
12 accordance with requirements and procedures prescribed in the Bureau's Smog Check Manual.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud or Deceit)**

15 44. Respondent Toby Ty White's smog check station license is subject to disciplinary  
16 action under section Health & Saf. Code section 44072.2, subdivision (d), in that Respondent  
17 committed dishonest, fraudulent or deceit acts whereby another is injured by issuing electronic  
18 certificates of compliance for Vehicles 1 through 4, identified in paragraphs 29 through 36 above,  
19 without ensuring that bona fide inspections were performed of the emission control devices and  
20 systems on the vehicles, thereby depriving the People of the State of California of the protection  
21 afforded by the Motor Vehicle Inspection Program.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 **(Violations of Motor Vehicle Inspection Program)**

24 45. Respondent Toby Ty White's technician licenses are subject to disciplinary action  
25 under pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed  
26 to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to  
27 perform the emission control tests on Vehicles 1 through 4, identified in paragraphs 29 through  
28 36 above, in accordance with procedures prescribed by the department.

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program)**

3 46. Respondent Toby Ty White's technician licenses are subject to disciplinary action  
4 under Health & Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply  
5 with provisions of California Code of Regulations, title 16, as follows:

6 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test Vehicles 1  
7 through 4, identified in paragraphs 29 through 36, in accordance with Health & Saf. Code section  
8 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

9 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the  
10 Emissions Inspection System by entering vehicle identification information or emission control  
11 system identification data for vehicles other than the ones being tested.

12 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on Vehicles 1  
13 through 4, identified in paragraphs 29 through 36 above, in accordance with the Bureau's  
14 specifications.

15 **NINTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit)**

17 47. Respondent Toby Ty White's technician licenses are subject to disciplinary action  
18 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondent committed  
19 dishonest, fraudulent or deceitful acts whereby another is injured by issuing electronic smog  
20 certificates of compliance for Vehicles 1 through 4, identified in paragraphs 29 through 36 above,  
21 without performing bona fide inspections of the emission control devices and systems on the  
22 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
23 Motor Vehicle Inspection Program.

24 **OTHER MATTERS**

25 48. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
26 suspend, revoke, or place on probation the registration for all places of business operated in this  
27 state by Respondent Toby Ty White, owner of Tobys Auto Repair, upon a finding that  
28 Respondent has, or is, engaged in a course of repeated and willful violations of the laws and

1 regulations pertaining to an automotive repair dealer.

2 49. Pursuant to Health & Saf: Code section 44072.8, if Smog Check Station License  
3 Number RC 186937, issued to Respondent Toby Ty White, owner of Tobys Auto Repair, is  
4 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of  
5 the Health & Saf. Code in the name of said licensee, including, but not limited to, Smog Check  
6 Inspector License Number EO 155095 and Smog Check Repair Technician License Number EI  
7 155095, may likewise be revoked or suspended by the Director.

8 50. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
9 Number EO 155095 and Smog Check Repair Technician License Number EI 155095, issued to  
10 Respondent Toby Ty White, are revoked or suspended, any additional license issued under  
11 Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be  
12 likewise revoked or suspended by the Director.

13 51. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Repair Technician  
14 Number EO 155095, issued to Respondent Toby Ty White, is revoked or suspended, any  
15 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in  
16 the name of said licensee may be likewise revoked or suspended by the Director.

17 **PRAYER**

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
19 and that following the hearing, the Director of Consumer Affairs issue a decision:

20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
21 186937, issued to Toby Ty White, owner of Tobys Auto Repair;

22 2. Revoking or suspending any other automotive repair dealer registration issued to  
23 Toby Ty White;

24 3. Revoking or suspending Smog Check Station Number RC 186937, issued to Toby Ty  
25 White, owner of Tobys Auto Repair;

26 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of  
27 Division 26 of the Health and Safety Code in the name of Toby Ty White, including, but not  
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limited to, Smog Check Inspector License Number EO 155095 and Smog Check Repair Technician License Number EI 155095;

5. Revoking or suspending Smog Check Inspector Number EO 155095, issued to Toby Ty White;

6. Revoking or suspending Smog Check Repair Technician License Numer No. EI 155095, issued to Toby Ty White;

7. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Toby Ty White;

8. Ordering Toby Ty White to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

9. Taking such other and further action as deemed necessary and proper.

DATED: August 29, 2017 Patrick Dorais

PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
*Complainant*

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